

Amendment to S. 2010, The Elder Justice Act

Chairman's Mark

Short Title; Table of Contents; Definitions (Section 1 of the Chairman's Mark)

Present Law

No provision.

Chairman's Mark

The mark sets forth the title of the Act as the Elder Justice Act and outlines the table of contents. It also specifies that any term defined in new amendment to Title XX of the Social Security Act has the meaning set forth by the Chairman's Mark.

Findings (Section 2 of the Chairman's Mark)

Present Law

No provision.

Chairman's Mark

The Chairman's Mark describes the following findings of Congress:

1. The proportion of the United States population age 60 years or older will drastically increase in the next 30 years as more than 76,000,000 baby boomers approach retirement and old age.
2. Each year, anywhere between 500,000 and 5,000,000 elders in the United States are abused, neglected, or exploited.
3. Elder abuse, neglect and exploitation have no boundaries, and cross all racial, social class, gender and geographic lines.
4. Victims of elder abuse, neglect, and exploitation are not only subject to injury from mistreatment and neglect, they are also 3.1 times more likely than elders who were not victims of elder abuse, neglect, and exploitation to die at an earlier age than expected.
5. There is a general dearth of data as to the nature and scope of elder abuse, neglect, and exploitation.
6. Despite the dearth of data in the field, experts agree that most cases of elder abuse, neglect, and exploitation are never reported and that abuse, neglect, and exploitation shorten a victim's life, often triggering a downward spiral of an otherwise productive, self-sufficient elder's life. Programs addressing other difficult issues such as domestic violence and child abuse and neglect have demonstrated the need for a multi-faceted law, combining public health, social service and law enforcement approaches.

7. For over 20 years, Congress has been presented with facts and testimony calling for a coordinated Federal effort to combat elder abuse, neglect and exploitation.
8. The federal government has been slow to respond to the needs of victims of elder abuse, neglect, and exploitation or to undertake prevention efforts.
9. No federal law has been enacted that adequately and comprehensively addresses the issues of abuse, neglect, and exploitation and there are very limited resources available to those in the field that directly deal with the issues.
10. Differences in State laws and practices in the areas of elder abuse, neglect, and exploitation lead to significant disparities in prevention, protective and social services, treatment systems, and law enforcement and lead to other inequities.
11. The Federal Government has played an important role in promoting research, training, public safety, data collection, the identification, development, and dissemination of promising health care, social, and protective services, and law enforcement practices, relating to child abuse and neglect, domestic violence, and violence against women. The Federal Government should promote similar efforts and protections relating to elder abuse, neglect, and exploitation.
12. The Federal Government should provide leadership and assist States and communities in their efforts to protect elders in the United States by-
 - (A) promoting coordinated planning among all levels of government;
 - (B) generating and sharing knowledge relevant to protecting elders;
 - (C) providing leadership to combat the abuse, neglect, and exploitation of the Nation's elders; and
 - (D) providing resources to States and communities to promote elder justice.
13. The problem of elder abuse, neglect, and exploitation requires a comprehensive approach that -
 - (A) integrates the work of health, legal, and social services agencies and organizations;
 - (B) emphasizes the need for prevention, reporting, investigation, assessment, treatment, and prosecution of elder abuse, neglect, and exploitation at all levels of government;
 - (C) ensures that sufficient numbers of properly trained personnel with specialized knowledge are in place to-
 - (i) treat, assess, and provide services relating to elder abuse, neglect, and exploitation; and
 - (ii) carry out elder protection duties;
 - (D) is sensitive to ethnic and cultural diversity;
 - (E) recognizes the role of mental health, disability, dementia, substance abuse, medication mismanagement, and family dysfunction problems in increasing and exacerbating elder abuse, neglect, and exploitation; and
 - (F) balances elders' right to self-determination with society's responsibility to protect elders.
14. The human, social, and economic cost of abuse, neglect and exploitation is high and includes unnecessary expenditures of funds from many public programs.

15. The failure to coordinate activities relating to, and comprehensively prevent and treat, elder abuse, neglect, and exploitation threatens the future and well-being of millions of elders in the United States.
16. All elements of society in the United States have a shared responsibility in responding to a national problem of elder abuse, neglect, and exploitation.

Purposes (Section 3 of the Chairman's Mark)

Present Law

No provision.

Chairman's Mark

The Chairman's Mark defines the purposes of the Elder Justice Act, as follows:

1. To enhance the social security of the Nation by ensuring adequate public-private infrastructure and resolve to prevent, detect, treat, understand, and intervene in, and where appropriate, aid in the prosecution of, elder abuse, neglect, and exploitation.
2. To bring a comprehensive approach to preventing and combating elder abuse, neglect and exploitation, a long invisible problem that afflicts the most vulnerable among the aging population of the United States.
3. To raise the issue of elder abuse, neglect and exploitation to national attention to national attention, and to create the infrastructure at the Federal, State and local levels to ensure that individuals and organizations on the front lines, who are fighting elder abuse, neglect, and exploitation with scarce resources and fragmented systems, have the resources and information needed to carry out their fight.
4. To bring a comprehensive multidisciplinary approach to elder justice.
5. To set in motion research and data collection to fill gaps in knowledge about elder abuse, neglect, and exploitation.
6. To supplement activities of service providers and programs, to enhance training, and to leverage scarce resources efficiently, in order to ensure that elder justice receives the attention it deserves as the Nation's population ages.
7. To recognize and address the role of mental health, disability, dementia, substance abuse, medication mismanagement, and family dysfunction problems in increasing and exacerbating elder abuse, neglect, and exploitation.
8. To create short- and long-term strategic plans for the development and coordination of elder justice research, programs, studies, training, and other efforts nationwide.
9. To promote collaborative efforts and diminish overlap and gaps in efforts in developing the important field of elder justice.
10. To honor and respect the right of all persons with diminished capacity to decision making, autonomy, self-determination, and dignity of choice.

11. To respect the wishes of individuals with diminished capacity and their family members in providing supportive services and care plans intended to protect elders from abuse, neglect (including self-neglect), exploitation.

Definitions (Section 4 of the Chairman’s Mark)

Present Law

No provision

Chairman’s Mark

Section 4 adopts the meaning of any term used in Section 2011 of the Social Security Act, unless specifically provided otherwise in the Chairman’s Mark.

Elder Justice (Section 5 of the Chairman’s Mark)

Amendments to the Social Security Act Title XX– Block Grants to States for Social Services and Elder Justice

Present Law

No provision.

Chairman’s Mark

Section 5 of the Chairman’s Mark would amend the Social Security Act by adding “Elder Justice” to an amended Title XX, entitled “Block Grants to States for Social Services and Elder Justice” and adding a new Subtitle 2 - Elder Justice.

Definitions (Section 2011 of the Social Security Act)

Definitions

Present Law

Under current law, “abuse,” “exploitation,” “long term care facility,” and “neglect” are defined in the “Older American’s Act.”

Chairman’s Mark

For data collection and other purposes of the mark, the Chairman’s Mark defines the following terms: adult protective services, caregiver, direct care, elder, elder justice, eligible entity, exploitation, fiduciary, grant, guardianship, Indian tribe, law enforcement, long-term care, long-term care facility, neglect, self-neglect, serious bodily injury, criminal sexual abuse, social, state, state legal assistance developer, and state long-term care ombudsman.

Definitions related to some of the purposes of the amended Title XX are defined in other related statutes. Related statutes are as follows:

Present Law and Chairman's Mark: Definitions

Term	Present law	Chairman's Mark
Abuse	<i>Section 102(13) of the Older Americans Act:</i> "Abuse" of an older person is defined as the willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish, or deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish or mental illness.	"Abuse" is defined as the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm.
Exploitation	<i>Section 102(24) of the Older Americans Act:</i> "Exploitation" of an older person is defined as the illegal or improper act or process of an individual including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain.	"Exploitation" is defined as the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, or gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets.
Long-term care facility	<i>Section 102 (32) of the Older Americans Act:</i> "Long term care facility" is defined as a skilled nursing facility as defined in Section 1819(a) of the Social Security Act; any nursing facility as defined in Section 1919(a) of the Social Security Act; and for purposes of the Title III and Title VII provisions for elder abuse prevention, a board and care facility.	"Long-term care facility" is defined as a residential care provider that arranges for, or directly provides, long-term care.
Neglect	<i>Section 102 (34) of the Older Americans Act:</i> "Neglect" is defined as the failure to provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or the failure of a caregiver to provide the goods or services.	"Neglect" is defined as the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an elder, or self-neglect.
Criminal sexual abuse	<i>Title XVII of the Violent Crime Control and Enforcement Act:</i> a "sexually violent offence" is defined as any criminal offense that consists of aggravated sexual abuse or sexual abuse (as defined by 18 U.S.C. Section 2241 and 2242 or as defined	"Criminal sexual abuse" is defined as serious bodily injury that shall be considered to have occurred if the conduct causing the injury is conduct constituting aggravated sexual abuse

Term	Present law	Chairman's Mark
	by state law) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse.	under Section 2241, or sexual abuse under 18 U.S.C. or any similar offence under state law.

General Provisions (Section 2012 of the Social Security Act)

a) Protection of Privacy

Present Law

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Section 264 governs the protection of individual health privacy.

Chairman's Mark

The activities that would be carried out under this Part must ensure the protection of individual health privacy consistent with the regulations under Section 264 (c) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any state and local privacy regulations.

(b) Rule of Construction

Present Law

No provision.

Chairman's Mark

Includes a provision to accommodate religious beliefs in health care when determining whether there is abuse for data collection purposes.

Part A – National Coordination of Elder Justice Activities and Research

Elder Justice Coordinating Council (Section 2021 of the Social Security Act)

Present law

No provision.

Chairman's Mark

The mark would establish an *Elder Justice Coordinating Council* in the Office of the Secretary of HHS.

Membership. The Council would be composed of the following members: the Secretary of HHS (or designee) who will chair the Council and the Attorney General (or designee). Membership would also include the head of each federal department or agency having administrative responsibility for administering programs related to elder abuse, neglect or exploitation. Members must be officers or employees of the federal government.

Meetings. The Council is to meet at least twice a year.

Duties and Reports. The Council would be required to make recommendations to the Secretary for the coordination of activities of the Department of Health and Human Services, the Department of Justice, and other relevant Federal, State, local, and private agencies and entities, relating to elder abuse, neglect, and exploitation and other crimes against elders. The Council would be required to submit a report to Congress that describes its activities and challenges; and make recommendations for legislation, model laws and other actions deemed appropriate. The report is to be submitted to Congress within two years of enactment of the Elder Justice Act and every two years thereafter.

Other Requirements. The Chairman's Mark also sets forth requirements for powers of the Council, vacancies in membership, travel expenses, and detail of federal government employees to the Council.

Advisory Board on Elder Abuse, Neglect and Exploitation (Section 2022 of the Social Security Act)

Present Law

No provision.

Chairman's Mark

The mark would establish the *Advisory Board on Elder Abuse, Neglect and Exploitation*.

Solicitation of Nominations, Membership, and Terms. The Secretary of HHS would be required to publish a notice in the *Federal Register* soliciting nominations for Advisory Board membership. The Board would be composed of 27 members appointed by the Secretary, and must have experience and expertise in prevention of elder abuse, neglect and exploitation. Each member would be appointed for a three year term, except for the first members of the Board whose terms would be staggered.

Duties and Reports. The Board would be required to create a short and long-term multidisciplinary plan for development of the field of elder justice.

Within 18 months of the Chairman's Mark's enactment and annually thereafter, the Advisory Board would be required to prepare and submit to the Elder Justice Coordinating Council and the appropriate committees of Congress, a report

containing information on federal, state, and local public and private elder justice activities. The report is also to contain recommendations on programs, research, services, practice, enforcement and coordination among entities that carry out elder justice and other related activities; modifications needed in federal and state laws, research, training, and national data collection; and on a multidisciplinary strategic plan to guide the field of elder justice.

Other Requirements. The Chairman's Mark sets forth requirements relating to powers of the Board, vacancies, expired terms, election of officers, travel expenses, and detail of government employees to the Board.

Research Protections (Section 2023 of the Social Security Act)

Present Law

Definition of Legally Authorized Representative. Subpart A of Part 46 of Title 45, Code of Federal Regulations, known as the Common Rule, that governs most federally-funded human subjects research, currently defines the term "legally authorized representative" as "an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research."

Researcher Guidelines. No guidelines are currently in place to assist researchers who work in the areas of elder abuse, neglect, and exploitation, with issues relating to human subjects research.

Chairman's Mark

The Mark would define "legally authorized representative," for purposes of research under the proposed Title XX, to mean, unless otherwise provided by law, the individual, or judicial or other body authorized under the applicable law to consent to medical treatment on behalf of another person."

It would also require the Secretary, acting through the Director of the National Institute on Aging (NIA), to promulgate guidelines to assist researchers working in the areas of elder abuse, neglect, and exploitation, with issues relating to human subjects research.

Authorization of Appropriations (Section 2024 of the Social Security Act)

Present Law

No provision.

Chairman's Mark

To carry out the functions under Subtitle A (the Federal Elder Justice System), the Chairman's Mark authorizes \$6.5 million for FY2007, and \$7 million for each of FYs 2008-2010.

Subpart 2 – Elder Abuse, Neglect, and Exploitation Forensic Centers

Establishment and Support of Elder Abuse, Neglect, and Exploitation Forensic Centers (Section 2031 of the Social Security Act)

Present Law

No provision.

Chairman's Mark

The Mark would require the Secretary, in consultation with the Attorney General, to award grants to eligible entities to establish and operate both stationary and mobile forensic centers and to develop forensic expertise pertaining to elder abuse, neglect, and exploitation. With respect to the stationary forensic centers, the Chairman's Mark would require the Secretary to make four grants to higher education institutions with demonstrated expertise in forensics or commitment to preventing or treating elder abuse, neglect, or exploitation; and with respect to mobile forensic centers, the Chairman's Mark would require the to make six grants to appropriate entities.

Funding would be authorized for the centers to: (1) develop forensic markers that would determine whether abuse or neglect occurred and whether a crime was committed, and determine methodologies for how and when intervention should occur; (2) develop forensic expertise with respect to elder abuse, neglect, and exploitation in order to provide relevant evaluation, intervention, support and advocacy, case review and tracking; and (3) in coordination with the Attorney General, use data made available by grant recipients under this section to develop the capacity of geriatric health care professionals and law enforcement to collect forensic evidence, including forensic evidence relating to a potential determination of elder abuse, neglect, or exploitation. The Chairman's Mark would also require the Secretary, in consultation with the Attorney General, to use data to develop the capacity to collect forensic evidence.

The Chairman's Mark would authorize \$4 million in funding for FY2007, \$6 million for FY2008 and \$8 million for each of FYs 2009-2010.

PART B - PROGRAMS TO PROMOTE ELDER JUSTICE

Enhancement of Long-Term Care (Section 2041 of the Social Security Act)

Present Law

Nursing homes that receive federal funds are required to meet certain federal laws and standards to receive funding. These laws require nursing aides, who work on a full-time basis for more than four months, to complete a training and/or competency evaluation program and be competent to provide care. Nursing homes must also provide regular performance reviews and in-service education (including training for individuals providing nursing and nursing-related services to residents with cognitive impairments) to assure that nurse aides are competent to perform services. Regulations also require nurse aides to complete a training program lasting no less than 75 clock hours of training, at least 16 of which must be supervised practical training, in order to be certified.

A number of states have also used enhanced Medicaid funding to improve recruitment and retention of nurse aides working in nursing homes. For these states, some portion of an increase in state Medicaid payments (and other public funding sources) to long-term care providers must be (or intended to be) used to increase wages and or benefits for nursing aides. Typically, this “wage pass-through” legislation has either designated some specified dollar amount (e.g., \$.50 or \$1.00) or a certain percentage of increased state payments to be used for wages and or benefits.

Nursing Home Compare is a website hosted by the Department of Health and Human Services that allows consumers to search for data on certain quality indicators for nursing homes certified to participate in Medicare and/or Medicaid across the country. The information reported on this site includes selected findings of the Survey and Certification surveys conducted by state Survey agencies during the three most recent inspections and complaint investigations. Specifically, the website contains data on the federal regulatory requirements that the nursing home failed to meet as reported on form HCFA-2567. There is currently no requirement that information about the adjudication of criminal violations be reported on this website.

Chairman’s Mark

The Mark would require the Secretary of HHS to carry out activities that provide incentives for individuals to train for, seek, and maintain employment providing direct care in long-term care facilities.

Coordination of Federal Agencies to Train Long-Term Care Staff. The Secretary of HHS would be required to coordinate activities with the Secretary of Labor and the Assistant Secretary of ACF to provide incentives to welfare-to-work and TANF recipients to train for and seek employment as direct care providers in long-term care facilities.

Career Ladders, Wage and Benefit Grants. The Secretary of HHS would be required to award grants to long-term care facilities to conduct programs that offer direct care employees continuing training and varying levels of certification. Grants would also be used to provide for or make arrangements with employers to pay bonuses, or other increased compensation or benefits, to employees who obtain

certification. To receive grant funds, long-term care facilities would submit applications directly to the Secretary.

Management Improvement. The Secretary of HHS would be required to award grants to long-term care facilities for training and technical assistance. Eligible recipients could include administrators, directors of nursing, staff developers, charge nurses, and others who establish or implement management practices for direct care employees. Training and technical assistance would be intended to promote retention and could include: (1) the establishment of human resource policies rewarding high performance, including policies that provide for improved wages and benefits on the basis of job reviews; (2) the establishment of motivational organizational practices; (3) the creation of a workplace culture that respects and values caregivers and their needs; (4) the promotion of a workplace culture that respects the rights of residents and results in improvements in their care; and (5) the establishment of other programs that promote high quality care, such as continuing education for certified nurse aide employees. Long-term care facilities would submit applications to the Administrator to qualify for grant funds. The Secretary would be required to develop accountability measures to ensure that funded activities under this title benefit eligible employees and increase the stability of the long-term care workforce.

Informatics Systems Grant Program. The Secretary is authorized to make grants to long-term care facilities for the purpose of assisting such entities in offsetting the costs related to purchasing, leasing, developing, and implementing standardized clinical health care informatics systems designed to improve patient safety and reduce adverse events and health care complications resulting from medication errors.

Inclusion of Certain Crimes on Nursing Home Compare Website. The Secretary is required to ensure that information relating to the number of criminal convictions by nursing facilities or by an employee of a nursing facility are part of the information provided for comparison of nursing facilities on the official Internet website of the Federal Government for medicare beneficiaries.

Consumer Rights Information Page on Nursing Home Compare Website. The Secretary shall ensure that the Nursing Home Compare Medicare website develops and includes a consumer rights information page that includes documentation on available nursing facilities; consumer rights; the survey process; and services available through the State long-term care ombudsman.

Standards Involving Clinical Data by Long-Term Care Facilities. The Secretary shall develop and adopt uniform open electronic standards for transactions involving clinical data by long-term care facilities.

The Chairman's Mark would authorize \$20 million for FY 07; \$17.5 million for FY 08 and \$15 million for FY 09 and FY 2010.

Adult Protective Services Functions and Grant Programs (Section 2042 of the Social Security Act)

Adult Protective Services - Functions

Present Law

Provisions related to some functions of adult protective services are found in Title XX of the Social Security Act (Social Services Block Grant) (administered by the Administration on Children and Families (ACF)) and the Older Americans Act (administered by AoA), both in DHHS, as follows.

Title XX of the Social Security Act. Title XX provides funds to states to carry out a wide range of social services on behalf of various groups. The statute sets out a number of goals for the use of these funds, including the goal of “preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests”

Funds are generally administered by state social services or human services agencies (for this purpose, sometimes referred to as adult protective services offices), and/or state agencies on aging.

No match is required for federal Title XX funds, and federal law does not specify a sub-state allocation formula. In other words, states have complete discretion for the distribution of funds within their borders. Based on the 2002 Annual Report for the Social Services Block Grant, 34 states used some portion of Title XX funds for adult protective services, and approximately 425,000 adults received adult protective services that were funded in whole or in part with Title XX funds. Of all state expenditures under Title XX for 2002, 5.8% were for protective services for adults.¹

Older Americans Act. Title II of the Older Americans Act requires the Assistant Secretary on Aging in DHHS to establish a National Center on Elder Abuse. The Center is required to, among other things, compile, publish and disseminate research and training materials on prevention of elder abuse, neglect, and exploitation; maintain a clearinghouse on programs showing promise in preventing elder abuse, neglect, and exploitation; conduct research and demonstrations projects that identify causes and prevention, and treatment; and provide technical assistance to state agencies and other organizations in planning and improving prevention programs. AoA awards funds to six organizations that share the funds: the National Association of State Units on Aging, which administers the Center, in cooperation with the National Protective Services Association, the National Committee for the Prevention of Elder Abuse, the American Bar Association, and the Clearinghouse on Abuse, Neglect and Exploitation.

Funding history for the Center is as follows: FY1998, \$250,000; FY1999, \$200,000; FY2000, \$815,250; FY2001, \$815,000; FY2002, \$815,000, and FY2003, \$815,000. The 2000 amendments to the Act required that the Center receive at least the same amount of funds as it received in FY2000.

¹ A percentage of *expenditures* differs from a percentage of the Title XX *appropriation*. Title XX expenditures include spending from funds transferred from the Temporary Assistance for Needy Families (TANF) program to Title XX.

Title III of the Older Americans Act authorizes, but does not require, state agencies on aging to conduct various activities related to prevention of elder abuse, neglect and exploitation. No federal funds are separately allotted for this purpose under Title III, and states decide how much of their Title III allotments are to be used for prevention activities. In many states, state agencies on aging administer funds for adult protective services funded under Title XX of the Social Security Act (described below).

Title VII of the Older Americans Act authorizes a program of grants to states to carry out activities related to prevention of elder abuse, neglect, and exploitation. Funds are administered by state agencies on aging. In FY2006, the appropriation level for this program under Title VII is \$5.2 million.

Section 1128E of the Social Security Act requires the Secretary to maintain a national health care fraud and abuse data collection program for the reporting of final adverse actions (not including settlements in which no findings of liability have been made), including health care related civil judgments and criminal convictions of health care practitioners, providers and suppliers. The database is directed by HHS, acting through the office of the Attorney General, and is named the Healthcare Integrity and Protection Data Bank (HIPDB).

For the purposes of this database, Medicaid regulation 42 CFR §455.12 requires that state agencies report the number of complaints of fraud and abuse made to the agency that warrant preliminary investigation. For each case, reports should include the provider's name and number; the source of the complaint; the type of provider; the nature of the complaint; the approximate range of dollars involved; and the legal and administrative disposition of the case, including actions taken by law enforcement officials to whom the case has been referred. Section 1128E requires the Secretary to include procedures assuring that the privacy of individuals receiving health care services is appropriately protected.

The Secretary makes available the information in the database to government agencies and health plans and, upon request, to health care providers, suppliers and practitioners who wish to self-query. The Secretary may establish or approve fees sufficient to recover the full costs of the databases' operation.

According to Section 1128E(g)(1)(A) of the Social Security Act, a final adverse action includes: (1) civil judgments related to the delivery of a health care item or service that are against a health care provider or practitioner in federal or state court; (2) federal or state criminal convictions related to the delivery of health care; (3) certain actions by federal or state agencies responsible for the licensing and certification of providers and licensed practitioners; (4) prohibition against participating in federal or state health care programs; or (5) any other adjudicated actions or decisions established by the Secretary under regulation.

Medicaid regulation 42 CFR §483.374 also requires facilities to report each serious occurrence to both the state Medicaid agency and, unless prohibited by state law, the state-designated protection and advocacy system.

Chairman's Mark

The Mark would establish certain functions with respect to *Adult Protective Services (APS)* to be administered by the Secretary.

Adult Protective Services - Functions. Functions include providing funding and support to state and local adult protective services offices that investigate reports of abuse, neglect and exploitation of elders and vulnerable adults; collecting and disseminating information on abuse in coordination with the Department of Justice; developing and disseminating information on best practices; conducting research and providing technical assistance to states that provide or fund protective services; and reports crimes on the Nursing Home Compare website.

To carry out these functions, the Chairman's Mark authorizes \$3 million for FY 2007 and \$4 million for each of FYs 2008-2010.

Adult Protective Service Grant Program (State Formula Grants)

Present Law

No provision in current law for state formula grants that are *solely and specifically* targeted at providing adult protective services and carrying out projects to employ workers having caseloads of elders alone.

Some other legislation is related to adult protective services, as follows.

Title XX of the Social Security Act. Title XX provides funds to states to carry out a wide range of social services on behalf of various groups. The statute sets out a number of goals for the use of these funds, including the goal of "preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests ..." Funds are generally administered by state social services or human services agencies (for this purpose, sometimes referred to as adult protective services offices), and/or state agencies on aging.

Title III of the Older Americans Act authorizes, but does not require, state agencies on aging to conduct various activities related to prevention of elder abuse, neglect and exploitation, which may include adult protective services. No federal funds are separately appropriated for this purpose under Title III, and states decide how much of their Title III allotments are to be used for these activities. In many states, state agencies on aging administer funds for adult protective services funded under Title XX of the Social Security Act (described below).

Title VII of the Older Americans Act authorizes a program of grants to states to carry out activities related to prevention of elder abuse, neglect, and exploitation. Funds are administered by state agencies on aging. In FY2006, the appropriation level for this program under Title VII is \$5.2 million.

Chairman's Mark

The Mark provides for grants to improve Adult Protective Services.

Grants to Improve Worker Caseloads for Adult Protective Services. The Secretary would be required to award annual grants to enhance adult protective

service programs provided by states and local governments.

Formula for Distribution of Funds. Distribution of funds to states would be based on a formula that takes into account the number of elders (people age 60 or older) residing in a state relative to the total U.S. population of elders. States would receive no less than 0.75% of the grant program's annual appropriation. The District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa would receive no less than 0.1% of the annual appropriation. In order to comply with these minimum amount requirements, the Secretary is required to make pro rata reductions in amounts to be allotted.

Use of Funds. Funds may be used only by states and local governments to provide adult protective services. State receiving funds would be required to provide these funds to the agency or unit of state government having legal responsibility for providing adult protective services in the state. Each state would be required to use these funds to supplement and not supplant other federal, state, and local public funds expended to provide adult protective services.

Reports. Each state would be required to submit a report to the Secretary on the number of elders served by the grants. The Secretary would be required to submit to the appropriate congressional committees a report compiling, summarizing, and analyzing the state reports.

The Chairman's Mark would authorize \$100 million for each of FYs 2007-2010.

State Adult Protective Service Grants (Demonstration Program)

Present Law

No provision in current law specifically authorizes a dedicated amount of funds for state adult protective service demonstration programs. However, the Older American Act authorizes a related demonstration program (as follows), but no specific authorization is specified by law.

Section 413 of the Older Americans Act, *Older Individuals' Protection from Violence Projects*, requires the Assistant Secretary to award funds to states, area agencies on aging, and nonprofit organizations, or tribal organizations to carry out a wide range of projects related to protection of older persons from violence. Funds are to be used to: support local communities to coordinate activities regarding intervention in and prevention of abuse, neglect, and exploitation; develop outreach to assist victims; expand access to family violence and sexual assault programs (including shelters, rape crisis centers, and support groups) as well as mental health services, safety planning and other services; and promote research on legal organization and training impediments to providing services through shelters and other programs.

Chairman's Mark

The Mark would require the Secretary to establish grants to states for adult protective service demonstration programs. Funds may be used by state and local units of government to conduct demonstration programs that test: training

modules developed for the purpose of detecting or preventing elder abuse; methods to detect or prevent financial exploitation and elder abuse; whether training on elder abuse forensics enhances the detection of abuse by employees of state or local government; and other related matters. States would be required to submit applications to the Secretary.

Each state receiving funds would be required to submit a report on the demonstration to the Secretary. The Secretary would be required to submit to the appropriate congressional committees a report compiling, summarizing, and analyzing the state reports, as well making recommendations for appropriate legislative or administrative action.

The Chairman's Mark would authorize \$25 million for each of FY2007-2010.

Long-Term Care Ombudsman Program Grants and Training (Section 2043 of the Social Security Act)

Present Law

Title II of the Older Americans Act requires the Assistant Secretary on Aging to establish the National Ombudsman Resource Center under the Director of the Long-Term Care Ombudsman program. The Center is required to, through grants and contracts, conduct research and provide training, technical assistance, and information to state long-term care ombudsmen; and to assist state long-term care ombudsmen in the implementation of the state long-term care ombudsman program. Funds awarded to the Center are not separately authorized, but are not to be less than the amount made available to the Center for FY2000. Funds for the Center are awarded through Title IV of the Older Americans Act (Research, Training and Demonstration Projects and Programs). The state long-term care ombudsman program is authorized by Title VII of the Act (Allotments for Vulnerable Elder Rights Protection Activities).

Chairman's Mark

The Chairman's Mark requires the Secretary to provide grants to improve the capacity of ombudsman programs to respond to and resolve complaints about abuse and neglect; conduct pilot programs; provide support for the resource center; and improve training. This provision is authorized at \$5 million for FY 07; \$7.5 million for FY 08 and \$10 million for FY 09 and FY 2010.

The Secretary shall establish programs to provide and improve ombudsman training with respect to elder abuse, neglect and exploitation for national organizations and State long-term care ombudsman programs. These programs are authorized at \$10 million for each of the fiscal years FY 07 through FY 2010.

PART C – Collection of Data, Dissemination of Information and Studies

Collection of Uniform National Data on Elder Abuse, Neglect and

Exploitation (Section 2051 of the Social Security Act)

Present Law

No provision that establishes an ongoing, uniform national data collection process or provides grants to states to assist with data collection.

A related law, the *Family Violence Prevention and Services Act of 1992* (P.L. 102-295), required HHS to conduct a study of the national incidence of abuse, neglect, and exploitation of elderly persons. This study, referred to as “the National Elder Abuse Incidence Study,” used a nationally-representative sample of 20 counties in 15 states and combined local Adult Protective Services (APS) reports with reports from other community service agencies to estimate the number of new elder abuse and neglect cases over a given period. The final report for this study was released by HHS in 1998.

In addition to the study described above, the federal government has periodically surveyed state APS units over the last 20 years on the prevalence of elder abuse, neglect and exploitation. In these surveys, there was significant variation among the states in the definitions used and the comprehensiveness of data collected. This variation has created challenges in establishing a national data set and identifying trends in abuse, neglect and exploitation.

Chairman’s Mark

The Mark would establish as the purpose of the section the improvement, streamlining, and promotion of uniform collection, maintenance and dissemination of national data regarding elder abuse, neglect and exploitation. The activities of the Secretary would be carried out in three phases.

The Secretary would be required to develop, under Phase I, a method for collecting national data regarding elder abuse, neglect and exploitation and uniform national data reporting forms adapted to each relevant entity or discipline (e.g., health, public safety, social and protective services and law enforcement). The Secretary would be required to consult with the Attorney General to develop this method for national data collection. The national data reporting forms must include the definitions of Title XX for determining whether an event will be reportable. Finally, the activities that would be carried out under this section must ensure the protection of individual health privacy consistent with the regulations under Section 264 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any state and local privacy regulations. Phase I must occur no later than one year after the date of enactment.

Phase II would require the Secretary to ensure that the national data reporting forms and data collection methods (developed under Phase I) would be pilot tested in six states selected by the Secretary. After pilot testing the data collection efforts, the Secretary must review the findings, consult with the Attorney General and other relevant experts, and adjust the national data reporting forms and data collection methods as necessary. Phase II must occur no later than one year following the completion of activities under Phase I.

Phase III would require the Secretary to submit the national data reporting

forms and instructions to (1) the heads of the relevant Federal entities as may be appropriate and (2) the Governor's office of each state for collection from all relevant state entities of data including health care, social services, and law enforcement data.

In Phase III, the Secretary would be authorized to award grants to states to improve data collection activities relating to elder abuse, neglect and exploitation. Each state that wants to apply for a grant, must submit an application to the Administrator following the prescribed requirements. Each state receiving a grant in a fiscal year would be required to submit data for the calendar year that begins during that year using the national data forms.

The amount of each grant to a state must be distributed using the following method: For the first fiscal year in which a state receives grant funds, the Secretary would be required to initially distribute 50% of those funds. The remaining funds are to be distributed at the end of the calendar year that begins during that fiscal year if the Secretary determines that the state has properly reported data required under this section for the calendar year. For subsequent years, the Secretary would be required to distribute grant funds to a state for a fiscal year if the state properly reported required data for the calendar year that ends during that fiscal year. The reports submitted by states must indicate the state and year in which the event occurred and identify the total number of events that occurred in each state during the year and the type of event.

The Secretary would be required to submit a report no later than one year after the enactment date regarding the activities required by this section to Congress including the Senate Committee on Finance and the House Committee on Ways and Means and the House Committee on Energy and Commerce.

To carry out the activities of this section, the Chairman's Mark would authorize \$10 million for FY2007; \$30 million for FY2008; and \$100 million for each of FYs 2009 and 2010.

Long-Term Care Consumer Clearinghouse (Section 2052 of the Social Security Act)

Present Law

No provision requiring establishment of a long-term care consumer clearinghouse.

In related activities, DHHS has funded some states to establish state-based consumer-friendly access to information about long-term care services. In FY2003 through FY2006, the Centers for Medicare and Medicaid (CMS) and AoA awarded approximately \$18 million in grants to states for the purpose of assisting states in their efforts to create a single, coordinated system of information and access for all persons seeking long term care to minimize confusion, enhance individual choice, and support informed decision-making. A total of 24 states have received grants for this purpose. Some of the common activities under this grant program include information and referral, outreach, counseling about public benefits and long-term care options, and case management. States' methods for implementing the grant may vary; some states have established an actual

physical location, and other states have established a statewide clearinghouse through a toll-free number or a web-based information site.

In addition, CMS has made available to the public, via its website, a comparison of Medicare and Medicaid-certified nursing homes and home health agencies. The information provides detailed facility and agency information and characteristics, and contains several measures of quality (e.g., improvement in mobility). This website does not cover assisted living facilities, group homes and other residential facilities that are not nursing facilities; nor does it cover non-medical, non-certified, home and community-based long-term care services.

Chairman's Mark

The Mark would require the Secretary to establish a long-term care consumer clearinghouse which must provide comprehensive detailed information, in a consumer-friendly form, to consumers about choices relating to long-term care providers.

The clearinghouse is to include information about obtaining the services of, and employing, caregivers; options for residential long-term care (e.g., the type of care provided by nursing facilities, and the type of care provided by group homes and other residential facilities); benefits available through the federal health care programs; and links to federal and state websites that describe the care available through specific long-term care facilities including information about the satisfaction of those residents and their families with the care provided. The clearinghouse must also provide information (from states and other sources) on long-term care providers including assisted living facilities, board and care facilities, congregate care facilities, home health care providers, and other long-term care providers.

To carry out the activities of this section, the Chairman's Mark would authorize \$2 million for FY2007; \$3 million for FY2008; and \$4 million for each of FYs 2009 and 2010.

Consumer Information about the Continuum of Residential Long-Term Care Facilities (Section 2053 of the Social Security Act)

Present Law

No provision.

Chairman's Mark

The Mark would require the Secretary, in consultation with the Attorney General, to conduct a study on consumer concerns relating to residential long-term care facilities other than nursing facilities. The study may be carried out either directly or through a grant. The organization conducting the study must develop definitions for classes of residential long-term care facilities and collect information on the following features of these facilities: prices, level of services, oversight and enforcement provisions, and admission and discharge criteria.

The Secretary would be required to prepare a report containing the results

of the study and submit the report to the appropriate committees.

To carry out the study, the Chairman's Mark would authorize \$3 million for each of FYs 2007-2010.

Evaluations of Elder Justice Programs (New Section 2054 of the Social Security Act)

Present Law

No provision.

Chairman's Mark

The Mark would require the Secretary of HHS to reserve a portion of the funds appropriated in each program under Title XX to be used to provide assistance to eligible entities to conduct validated evaluations of the effectiveness of the activities funded under each program under Title XX. To be eligible to receive these funds, an eligible entity must submit an application to the Secretary following the timing and requirements prescribed by the Secretary including a proposal for the evaluation.

Entities would be required to submit to the Secretary and appropriate congressional committees a report containing the results of the evaluation together with any recommendations deemed appropriate. The report would be due by the date specified by the Secretary.

Report (New Section 2055 of the Social Security Act)

Present Law

Currently, no provision exists concerning federal agency coordination to encourage the employment of welfare recipients or recipients of Temporary Assistance to Needy Families (TANF) in long-term care facilities.

Chairman's Mark

The Chairman's Mark requires, not later than October 1, 2011, a report from the Secretary to the Elder Justice Coordinating Council and appropriate committees, summarizing (1) State reports submitted under section 2042; (2) results of the study under section 2053; (3) recommendations for legislative or administrative action; and (4) a requirement for state plans under the program for Temporary Assistance for needy Families.

Amendments to the Part A, Title XI of the Social Security Act — Long-Term Care Facilities (Section 5(b) of the Chairman's Mark)

Present Law

No federal provisions for mandatory reporting of crimes in federally funded

long-term care facilities. There are some federal laws and regulations under Medicare and Medicaid in the event that a facility participating in either of those programs closes.

Reporting. Based on a 2000 survey of state Adult Protective Services systems, all states had elder/adult abuse reporting laws. State laws varied in who was a mandated reporter and who was encouraged to report incidents of elder/adult abuse. Many states and territories named health care professionals, such as nurses, physicians and nurse aides, as mandated reporters of elder/adult abuse. Five states did not list anyone as a mandated reporter.

Eleven states reported that there were no statutory consequences for failure of mandated reporters to report abuse; the remaining states and the District of Columbia and Guam had a specified consequence. The most common consequence for failing to report was a misdemeanor with a possible fine and/or jail sentence. State law also varied with regard to specifying a time frame within which reporters were required to report suspicion of abuse. Nineteen states had no time frame. Of those that specified a time frame, the requirements varied from immediately to more than four days.

Notification of Facility Closure. If a long-term care facility that receives federal funds through participation in Medicare or Medicaid closes, current federal laws and regulations provide some guidance on the parties that need to be notified and the process for relocating residents. If a facility wants to terminate its status as a Medicare provider (for example, due to facility closure), the facility must notify both CMS and the public no later than 15 days in advance of the proposed termination date. If a facility wants to terminate its status as a Medicaid provider, federal regulations do not specify a timeframe for notifying federal or state agencies; however, the facility is required to notify Medicaid residents at least 30 days before transferring or discharging him or her. Facility closure is one circumstance in which a resident would need to be transferred.

The state Medicaid agency has the primary responsibility for relocating Medicaid patients and for ensuring their safe and orderly transfer from a facility that no longer participates in Medicaid to a participating facility that meets acceptable standards. CMS has provided guidance to states concerning relocating patients. Each state is expected to have a plan that describes the relocation of patients. Additionally, the notice to residents is to include information as to how to contact the ombudsman established by the Older Americans Act.

Chairman's Mark

Reporting of Crimes in Federally-funded Facilities. The Chairman's Mark would require reporting to law enforcement of crimes occurring in federally funded long-term care facilities that receive at least \$10,000 in federal funds during the preceding year. The owner or operator of these facilities would be required to annually notify each individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility that they are required to report any reasonable suspicion of a crime against any person who is a resident of or receiving care from the facility. These individuals are referred to in this section as "covered individuals." Suspected crimes must be reported to the

Secretary and one or more law enforcement entities for the political subdivision in which the facility is located.

Timing of Reporting. If the events that cause the suspicion of a crime result in serious bodily injury, the covered individual must report the suspicion immediately, but not later than two hours after forming the suspicion. If the events that cause the suspicion do not result in serious bodily injury, the individual must report the suspicion not later than 24 hours after forming the suspicion.

Penalties for Non-Reporting. If a covered individual does not report suspicion of a crime within the timeframe described above, the individual will be subject to a civil money penalty of up to \$200,000, or the Secretary shall classify the individual as an 'excluded individual' (i.e., any employer of the individual is unable to receive federal funds) for a period of not more than three years. If a covered individual does not report suspicion of a crime within the timeframe described above and this violation exacerbates the harm to the victim, or results in harm to another person, the individual will be subject to a civil money penalty of up to \$300,000, and the Secretary shall classify the individual as an 'excluded individual' (i.e., any employer of the individual is unable to receive federal funds) for a period of not more than three years.

If an individual is classified as an "excluded individual," any entity that employs that individual will not be eligible to receive federal funds. The Secretary may take into account the financial burden on providers with underserved populations in determining any penalty to be imposed under this section. Underserved populations are defined as the population of an area designated by the Secretary as an area or population group with a shortage of elder justice programs. These may include those that are geographically isolated, racial and ethnic minority populations, and populations underserved because of special needs (such as language barriers, disabilities, alien status, or age).

Additional Penalties for Retaliation. A long-term care facility may not retaliate against an employee for making a report, causing a report to be made, or for taking steps to make a report. Retaliation includes discharge, demotion, suspension, threats, harassment, denial of a promotion or other employment-related benefit, or any other manner of discrimination against an employee in the terms and conditions of employment because of lawful acts done by the employee. Long-term care facilities may also not retaliate against a nurse by filing a complaint or report with the appropriate state professional disciplinary agency because of lawful acts done by the nurse.

If a long-term care facility does retaliate, it shall be subject to a civil money penalty of up to \$200,000 or the Secretary may exclude it from participation in any federal health care program for a period of two years.

Notice to Employees. Each long-term care facility must post conspicuously, in an appropriate location, a sign specifying rights of employees under this section. The sign shall include a statement that an employee may file a complaint against a long-term care facility that violates the provisions of this section with the Secretary. The notice must also contain information as to how to file a complaint.

Notification of Public Agencies and Safety of Residents in the Event of Facility Closure. In addition, if a long-term care facility (that receives at least \$10,000 in federal funds during the previous year) is going to close, the owner or operator of the facility must submit to the Secretary and the appropriate state regulatory agency written notification of an impending closure within 60 days prior to the closure date. In the notice, the owner or operator must include a plan for transfer and adequate relocation of residents, including assurances that residents will not be moved to the most appropriate facility in terms of quality, services, and location. Within 10 days after the facility closes, the owner or operator of the facility must submit to the Secretary, and the appropriate state agency, information on where the residents were transferred to and when.

Anyone who owns a skilled nursing facility that fails to comply with the notification of closure and reporting requirements shall be subject to a civil monetary penalty of up to \$1,000,000, exclusion from participation in the programs under the Social Security Act, and any other civil monetary penalties and assessments.

A civil monetary penalty or assessment will be imposed in the same manner as a civil monetary penalty, assessment or exclusion under Section 1128A of the Social Security Act.

Amendments to Part A, Title XI of the Social Security Act — National Nurse Aide Registry Study and Report (Section 5 (c) of the Chairman’s Mark)

Present Law

Section 1819(b)(5)(F) (Medicare law) and 1919(b)(5)(F) (Medicaid law) of the Social Security Act define nurse aides as individuals providing nursing or nursing-related services to residents in nursing facilities as well as registered dietitians or persons who volunteer to provide such services without monetary compensation. Nurse aides do not include physicians; physician assistants; nurse practitioners; physical, speech, or occupational therapists; physical or occupational therapy assistants; registered professional nurses; licensed practical nurses or licensed certified social workers. For Medicare-certified facilities, nurse aides also exclude registered respiratory therapists or certified respiratory therapy technicians.

No present law exists concerning a nurse aide registry study.

Chairman’s Mark

The Secretary shall conduct a study on establishing a national nurse aide registry that shall include an evaluation of who should be included in the registry; how the registry would comply with Federal and State privacy laws and regulations; how data would be collected for the registry; what entities and individuals would have access to the data collected; how the registry would provide appropriate information regarding violations of Federal and State law by

individuals included in the registry; how the functions of the registry would be coordinated with the pilot program for national and State background checks on direct care patient access employees of long-term care facilities and how the information in State nurse aide registries would be maintained in a national registry.

After receiving the report submitted to Secretary, the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate shall, as they deem appropriate, take action based on the recommendations contained in the report.

Not later than 18 months after the date of enactment of this Act, the Secretary shall submit a report to the Elder Justice Coordinating Council, the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate containing the findings and recommendations of the study. Funding for the study shall not exceed \$500,000.